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6 Attorney for Plaintiff
7 JOSEPHINE A. TEJANO

8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA

10 JOSEPHINE A. TEJANO,

11 Plaintiff,

12 vs.

13 PROVIDENCE PLACE, INC., PROVIDENCE
14 CARE, INC.dba PROVIDENCE, DOES ONE
15 THROUGH FIVE,

16 Defendants.
17

Case No.

C08-02826 PJH

COMPLAINT FOR DAMAGES AND
DEMAND FOR JURY TRIAL

- 1) Violation of California Labor Code §1194; 2). Violations of The Fair Labor Standards Act (Non-payment of overtime); 3). For Restitution of Unpaid Overtime Wages in Violation of California's Unfair Trade Practices Act. (B.P.C. 17200); 4). Civil Penalties Under Labor Code §558; 5). L.C. §203 "waiting time" penalties;

18 The Plaintiff, JOSEPHINE A. TEJANO, for her complaint alleges as follows:
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21 NATURE OF CLAIM

22 1. This is a complaint by a former employee against her ex-employer(s) for
23 damages arising out her employer's failure to pay her overtime as required by the Fair Labor
24 Standards Act and the California Wage Orders and Statutes. The Plaintiff seeks compensatory
25 damages for unpaid wages in addition to liquidated damages under Title 29 U.S.C. Section 216(b),
26 waiting time penalties under California Labor Code Section 203, attorneys' fees and costs, and
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1 pre-judgment interest pursuant to California Labor Code Section 1194(a) and Title 29 U.S.C.
2 Section 216(b).

3 PARTIES

4
5 2. The Plaintiff sues fictitious Defendants Does One through Five, inclusive,
6 pursuant to Federal Rules Civil Procedure Rules 4 and 15 consistent with CCP Section 474,
7 because their true names and/or capacities (whether individual, corporate, associate, or
8 otherwise), and/or facts showing them liable, are not known presently. Unless otherwise
9 indicated, each Defendant is sued as the agent and acting with the full knowledge and consent of
10 the other said co-defendants. Plaintiff will ask leave of the Court to amend this Complaint to
11 show their true names and capacities when the same have been ascertained. Plaintiff is informed
12 and believes, and thereon alleges that each of these fictitiously named Defendants is responsible
13 in some manner for the occurrences herein alleged, and that the Plaintiff's injuries herein alleged
14 were proximately caused by the aforementioned Defendants.
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16 3. At all times herein mentioned: Defendants, PROVIDENCE PLACE, INC.,
17 PROVIDENCE CARE, INC., dba PROVIDENCE, DOES ONE THROUGH FIVE (hereinafter be
18 jointly and collectively referred to as "PROVIDENCE" or "Defendant(s)"), which on information
19 and belief is a California business entity of unknown legal composition with its principal offices
20 located at 2456 Geary Blvd, California, 94115, has and is actively engaged in business at the its
21 residentail care facilities in San Francisco and throught out the Bay Area of Northern California.
22

23 4. Plaintiff, JOSEPHINE A. TEJANO (hereinafter "TEJANO" or "Plaintiff"),
24 was employed by Defendant from April of 2004 through December of 2007, as a "caregiver".
25 TEJANO, at all times relevant herein, was a resident of the City of Oakland, State of California,
26 and the County of Alameda.
27
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JURISDICTION

5. Jurisdiction of this action is based upon Fair Labor Standards Act, 28 U.S.C. §§201 et seq. and the pendant jurisdiction of this court and all such violations herein alleged having occurred in the County of San Joaquin, California.

6. Plaintiff, TEJANO, is a citizen of the State of California. All named Defendants are believed to be residents of, or have their principal place of business in San Francisco County, California. The matter in controversy does exceed, exclusive of interest and costs, the sum of \$75,000.00.

GENERAL ALLEGATIONS

7. During the period that included April of 2004 through December of 2007, the Plaintiff was employed by the Defendant under the title of "caregiver" for PROVIDENCE at its locations within the San Francisco Bay Area of California.

8. Plaintiff was employed by the Defendant for an indefinite duration pursuant to an oral and implied employment agreement. The terms of the agreement generally provided that Plaintiff would provide full time employment services, and in return she would be paid an hourly wage during her employment.

9. While Plaintiff, an hourly employee, was employed by the Defendant, Plaintiff performed "non-exempt" job duties as a caregiver. Plaintiff was not subject to any exemptions from overtime pursuant to the Fair Labor Standards Act, at 29 CFR 541.112, 541.209 and 541.309. Plaintiff was not even marginally responsible for management and administrative functions, and Plaintiff's primary duties did not require that she exercise independent discretion and judgment or regularly require invention or imagination in a recognized field of artistic endeavor more than fifty percent of her working time.

1 10. At no time during Plaintiff's employment did Plaintiff maintain any
2 professional license with the State or practice any recognized profession, nor did Plaintiff
3 exclusively manage any division of the Defendant employer's business where she customarily and
4 regularly exercised discretionary powers or perform services of management. Plaintiff did not
5 participate in the development of general administrative policies of her employer.
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8 **COUNT ONE**

9 *Violation Of California Labor Code, Non Payment Of*

10 *Overtime Labor Code Sections §510, 1194 - 1173*
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12 11. Plaintiff realleges and incorporates by reference the allegations of
13 paragraphs 1-10.

14 12. At all times relevant herein, Plaintiff's employment was subject to California
15 Labor Code Sections 1194 and 510, and the applicable Wage Orders promulgated by the
16 California Industrial Welfare Commission pursuant to Labor Code Section 1173, which required
17 all employees to be paid overtime for work performed in excess of forty hours per week, unless
18 specifically exempted by the law.
19

20 13. During the period of April of 2004 through December of 2007, the Plaintiff
21 worked in Defendant's behalf in excess of forty hours per week and in excess of eight hours per
22 day. Plaintiff received no overtime wage premium from Defendant for these hours worked in
23 excess of forty hours per week.
24

25 14. From April of 2004 through December of 2007, Defendant knowingly caused,
26 suffered and permitted Plaintiff to regularly work in excess of forty hours per week without
27 paying Plaintiff one and one half, or double, Plaintiff's regular rate of pay. Defendant was fully
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1 aware of both the hours worked and duties assigned to Plaintiff. Defendant caused the Plaintiff
2 to work such hours without additional compensation or else suffer the loss of her employment.

3 15. By not paying overtime wages in compliance with the state law, Defendant
4 violated Plaintiff's rights under the law, specifically California Labor Code Section 1194.

5 16. As a direct and proximate result of Defendant's failure to pay proper wages
6 under the California Wage Orders, Plaintiff incurred general damages in the form of lost wages in
7 the amount presently believed to be by the Plaintiff to be in excess of \$40,000.

8 17. Defendant is aware of the existence and requirements of the California Labor
9 Code Sections 510 and 1194 and the Wage Orders, and willfully, knowingly and intentionally
10 failed to pay Plaintiff the overtime compensation due to him at the time her employment ended.

11 18. Plaintiff was required to retain attorneys for the purpose of bringing this
12 action and is entitled to an award of attorneys' fees and pre-judgment interest pursuant to
13 California Labor Code Section 1194(a).

14 WHEREFORE, Plaintiff prays for judgment as set forth below.
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18 **COUNT TWO**

19 *Violation Of The Fair Labor Standards Act,*

20 *29 U.S.C. Section 209, et seq.*

21 19. Plaintiff realleges and incorporates by reference the allegations of
22 paragraphs 1-18.
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24 20. At all times relevant herein, Plaintiff's employment was subject to the
25 provisions of the Fair Labor Standards Act of 1938, as amended ("FLSA"), 29 U.S.C. Section
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1 209, et seq. and the Plaintiff was an individual employee covered by virtue of her direct
2 engagement in interstate commerce.

3 21. During the period of April of 2004 through December of 2007, Plaintiff
4 worked in Defendant's behalf in excess of forty hours per week. Plaintiff received no overtime
5 wage premuim from Defendant for these hours worked in excess of forty hours per week. At all
6 times Plaintiff performed "non-exempt" duties in excess of that allowed by the code of federal
7 regulations which implements the Fair Labor Standards Act, at 29 CFR 541.112, 541.209 and
8 541.309.
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10 22. During the period of April of 2004 through December of 2007, Defendant
11 knowingly caused, suffered and permitted Plaintiff to regularly work in excess of forty hours per
12 week without paying Plaintiff one and one half of Plaintiff's regular rate of pay. Defendant was
13 fully aware of both the hours worked and the duties assigned to the Plaintiff. Defendant caused
14 that Plaintiff to work such hours without additional compensation or suffer the loss of her
15 employment.
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17 23. By not paying overtime wages in compliance with FLSA, Defendant violated
18 Plaintiff's right under this Act.
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20 24. As a direct and proximate result of Defendant's failure to pay proper wages
21 under the FLSA, Plaintiff incurred liquidated damages in the form of lost wages in the amount
22 presently known to the Plaintiff to be in excess of \$40,000.

23 25. Defendants intentionally, with reckless disregard for their responsibilities
24 under the FLSA, and without good cause, failed to pay Plaintiff her proper pay and thus
25 Defendants are liable to Plaintiff for liquidated damages in an amount equal to Plaintiff's lost
26 wages pursuant to Title 29 U.S.C. Section 216(b) of the FLSA.
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1 received no overtime wage premium for overtime to that which she was legally entitled from the
2 Defendant for these hours worked in excess of forty hours per week or eight hours a day, but
3 instead was only paid Plaintiff's regular wage of \$11 per hour with Defendant keeping to itself
4 the amount which should have been paid to the Plaintiff.
5

6 31. By not paying overtime wages in compliance with the state law, Defendant
7 violated Section 17203 the Unfair Trade Practices Act by committing acts prohibited by
8 applicable Wage Orders and Labor Code Section 1194 and thus giving it a competitive advantage
9 over other employers and businesses with whom it was in competition and who were in
10 compliance with the law.
11

12 32. As a direct and proximate result of Defendant's violations and failure to pay
13 the required overtime wages under Wage Orders, the Plaintiff's rights under the law were violated
14 and the Plaintiff incurred general damages in the form of unpaid wages to which she was legally
15 entitled in the amount presently believed to be in excess of \$40,000.
16

17 33. Defendant is aware of the existence and requirements of the Unfair Trade
18 Practices Act and Labor Code Section and the Wage Order, but willfully, knowingly, and
19 intentionally failed to pay Plaintiff the overtime compensation due.
20

21 34. Plaintiff, having been illegally deprived of the overtime wages to which she
22 was legally entitled herein seeks restitution of such wages pursuant to Section 17203 of the
23 Business and Professions Code.
24

25 WHEREFORE, Plaintiff prays for judgment as set forth below.
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COUNT FOUR

(Penalty for Failure to Pay Overtime Wages Labor Code Sec. 558)

35. Plaintiff realleges and incorporates by reference the allegations of paragraphs 1-26.

36. From April of 2004 through December of 2007, Defendant failed to pay the Plaintiff her overtime wages.

37. Pursuant to California Labor Code Section 558, the employer's failure to pay overtime wages shall cause the employer to be liable for a civil penalty of \$100, to be paid to the State of California for each pay period the employee was underpaid.

38. Defendant failed to pay Plaintiff her overtime wages for 64 weekly pay periods for civil penalties due of approximately \$19,000.

COUNT FIVE

(Penalty for Failure to pay wages at termination Labor Code Sec. 203)

39. Plaintiff realleges and incorporates by reference the allegations of paragraphs 1-26.

40. At the time Plaintiff's employment was terminated by Defendant, Defendant owed Plaintiff in excess of \$40,000 in unpaid overtime wages.

41. Failure to pay wages at an employee's termination as required by Labor Code §201, subjects the employer to penalties provided for in Labor Code Section 203, up to 30 days of wages.

42. As of this date these wages have not been paid, thus making Defendant liable to Plaintiff for penalties for thirty (30) days wages of approximately \$2640.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiff prays judgment against the Defendants and demands as follows:

1. For compensatory damages for unpaid overtime in the amount according to proof of approximately \$40,000;
2. For liquidated damages of double the unpaid overtime pursuant to Title 29 U.S.C. Section 216(b) of the FLSA believed to be in the amount of approximately \$25,000;
3. For the restitution of her overtime wages pursuant to California Business and Professions Code Section 17203 believed to be in the amount of approximately \$40,000;
4. For civil penalties pursuant to Labor Code Section 558 of \$6400;
5. For waiting time penalty damages of thirty days wages, pursuant to California Labor Code Section 203 of approximately \$2640;
6. For pre-judgment interest of 10% on the unpaid overtime compensation pursuant to California Labor Code Section 1194(a);
7. For reasonable attorneys' fees pursuant to California Labor Code Section 1194(a) and Title 29 U.S.C., Section 216(b) of the FLSA;
8. For costs of suit herein;
9. For such other and further relief as the Court may deem appropriate;

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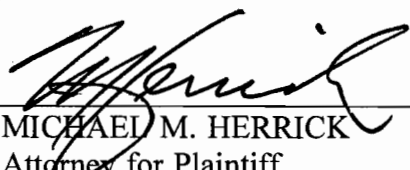
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1 10. The total amount claimed in this complaint, exclusive of interest, costs and
2 attorneys' fees, is \$86,600.

3
4 Dated: June 5, 2008

5
6 MICHAEL M. HERRICK
Attorney at Law

7
8
9 By: _____


MICHAEL M. HERRICK
Attorney for Plaintiff
JOSEPHINE A. TEJANO

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury on all claims alleged herein.

DATED:

6/6/68

LAW OFFICES OF MICHAEL M. HERRICK

By:

Michael M. Herrick
Attorney for Plaintiff
JOSEPHINE A. TEJANO

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON PAGE TWO.)

I.(a) PLAINTIFFS

JOSEPHINE A. TEJANO

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF Alameda
(EXCEPT IN U.S. PLAINTIFF CASES)

DEFENDANTS

PROVIDENCE PLACE, INC.

PROVIDENCE CARE, INC., dba PROVIDENCE

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT San Francisco
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

HERRICK LAW OFFICES 1750 Montgomery St. #1104
San Francisco, CA 94111 (415) 781-2804

ATTORNEYS (IF KNOWN)

II. BASIS OF JURISDICTION (PLACE AN "X" IN ONE BOX ONLY)

- ☐ 1 U.S. Government Plaintiff
☒ 2 U.S. Government Defendant
☒ 3 Federal Question (U.S. Government Not a Party)
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN "X" IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

- | | PTF | DEF | | PTF | DEF |
|---|---------------------------------------|----------------------------|---|---------------------------------------|----------------------------|
| Citizen of This State | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State | <input checked="" type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. ORIGIN

(PLACE AN "X" IN ONE BOX ONLY)

- ☒ Original Proceeding
☐ Removed from State Court
☐ Remanded from Appellate Court
☐ Reinstated or Reopened
☐ Transferred from Another district (specify)
☐ Multidistrict Litigation
☐ Appeal to District Judge from Magistrate Judgment

V. NATURE OF SUIT (PLACE AN "X" IN ONE BOX ONLY)

CONTRACT	TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input checked="" type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault Libel & Slander <input type="checkbox"/> 330 Federal Employers Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury Med Malpractice <input type="checkbox"/> 365 Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 RR & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt Relations <input type="checkbox"/> 730 Labor/Mgmt Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 610 Selective Service <input type="checkbox"/> 650 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 990 Other Statutory Actions
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 445 Amer w/ disab - Empl <input type="checkbox"/> 446 Amer w/ disab - Other <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Satellite TV	PRISONER PETITIONS <input type="checkbox"/> 510 Motion to Vacate Sentence Habeas Corpus <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition			

VI. CAUSE OF ACTION (CITE THE US CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY)

Filed under 29 U.S.C. Sec. 209 et. seq. Fair Labor Standards Act, (unpaid overtime) and pendent state claims.

VII. REQUESTED IN COMPLAINT: ☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$ \$86,000 ☐ CHECK YES only if demanded in complaint: JURY DEMAND: ☐ YES ☐ NO

VIII. RELATED CASE(S) IF ANY PLEASE REFER TO CIVIL L.R. 3-12 CONCERNING REQUIREMENT TO FILE "NOTICE OF RELATED CASE".

IX. DIVISIONAL ASSIGNMENT (CIVIL L.R. 3-2) (PLACE AN "X" IN ONE BOX ONLY)

☒ SAN FRANCISCO/OAKLAND☐ SAN JOSE

DATE

SIGNATURE OF ATTORNEY OF RECORD

MICHAEL M. HERRICK CSB #63666

Michael M. Herrick
6/7/08

Court Name: U.S. District Court, NDCA
Division: 4
Receipt Number: 44611002269
Cashier ID: lenahac
Transaction Date: 06/06/2008
Payer Name: Herrick Law Offices

CIVIL FILING FEE
For: Josephine A. Tejano
Case/Party: D-CAN-3-08-CV-002826-001
Amount: \$350.00

CHECK
Check/Money Order Num: 4325
Amt Tendered: \$350.00

Total Due: \$350.00
Total Tendered: \$350.00
Change Amt: \$0.00

PJH

Checks and drafts are accepted
subject to collections and full
credit will only be given when the
check or draft has been accepted by
the financial institution on which
it was drawn.